2:Seligman & Seligman E-5 (1909-1910) 1932
FJ23 Shilluk FJ23

643 but others should crouch with head turned over the right shoulder,
644 and perhaps with one hand shading the face. Aker, widow of two kings and one of our best informants, used to delight to mimic the respectful manner in which she would serve the king, presenting food on her knees with head averted, and then move away kneeling to crouch with averted face while the king was eating, her garment being held to her side by her elbow; after the king had eaten she would pour water on his hands, still with averted face.

643 Disputes may be settled by the local or district chiefs, but an appeal
[642] to the king is always possible. District and village chiefs are assisted by the local elders in the administration of justice. The method
[645] of raising the tribute to the king has not been investigated, but examples in the following pages (confirmed by Westermann's account) will show that certain clans owed special duties to the king; indeed, anyone killing a leopard must send its skin to the royal household, while the great antelope is specially hunted to obtain skins for the king. As the fountain of justice, the king kept for himself by far the greater part
643 of the fines for homicide and other grave offences. The fine for
641 man-killing was usually ten head of cattle, but sometimes more was levied; a girl might be taken in lieu of the cattle, when the king would allow the girl to marry but would keep the bride-wealth; or a girl and boy might be kept as hostages by the king until the cattle were paid. The king might give one or two head of cattle to the family of the deceased as compensation; this, however, did
[628] not always settle the matter, and a blood feud might start and be continued until the balance of dead was even, often not only families but whole villages becoming involved.

635 Hofmayr, quoting Father Banholzer, describes the investiture of
577 a high chief of one of the ten main provinces.[1] It is obvious that his functions are regarded as more than merely administrative, and that his correct ethical behaviour is almost the main concern of the old man—one of his future sub-chiefs—who, clasping his feet, recites the duties of his new office. He should let no stranger go hungry, he should use no abusive language, but be just and leave the houses and women of his underlings alone. The new high-chief takes oath to observe these duties, in token of which he licks the blade of a spear, presses it to his forehead, and then waves it over the ox he sacrifices. He remains in seclusion in his hut for four days;

[1] Op. cit., 111. These great chiefs are known as *Long Duong*. This is not a traditional but rather a modern title, lit. "big chief". All chiefs are ago.

3:Westermann E-5 (1910) 1912 FJ23 Shilluk FJ23

643

right to the throne. If all the sons of a king die, before it is the turn of one of them to become king, that family loses its royal prerogatives. A left-handed or otherwise deformed man cannot be crowned. When from such or a similar reason the son of a king fails to be crowned, his posterity loses the right to the throne.

As a rule only a man can be king; though once a queen reigned, she apparently did not command a great authority, vide page 149; and it is characteristic that in the lists given by Bachelor and Dr. Gillan her name is not mentioned. [562]

The way in which the king is elected, vide page 122 ff. Of course frequently party intrigues are at work on these occasions, and it may have been not quite an uncommon occurrence that there were several candidates for the throne, supported by different factions; sometimes there were even two kings, residing in different places of the country. [662]

POWER OF THE KING

The power of the king was, previous to the British occupation, absolute; he disposed on life and death of his subjects. The subjects had to pay heavy taxes in cattle, dura, beans, skins for clothes, and under certain circumstances, in persons also. [65]

JURISDICTION

All judicial cases may be brought before the king, with whom lies the final decision. They have an unwritten code of law, providing fixed penalties and fines. Cattle thieves were formerly killed on the spot by the owner of the stolen property. If the thief escaped, but was located with the stolen thing, the owner demanded it. In case the thief refused to give it up and the owner was unable to get it by force, he then reported to his chief, and if he failed there, the matter went to the king, who punished the man perhaps by taking his property and some girls from his village for himself. 691 693 685

In the case of certain infractions of the law the convict becomes the slave of the king, and could no more return to his home. These slaves are known as *tyat reyk* ("men of crime") or *adjoy*. The king gives to such a man a wife. Their children are slaves at the royal court and are called *adjoy*. To the male descendants of such the king gives wives, and the females are taken to be given to male members of the *adjoy* class as wives. If the king does not have enough girls in the *adjoy* class to supply all the young men with wives, he buys free girls for the purpose, their descendants become also slaves. 681 569 [649]

In some cases the criminal becomes the slave of a chief; these are also called *adjoy*.

Murder cases were tried by a court of chiefs and the king. If the man was condemned, he was disposed in many ways before the people. Sometimes he was led about the village with a cow-rope around his neck, and then executed by hanging. If a man was executed on account of a crime, his whole family 682 672

LEGAL PROCEDURE

According to Hofmayr, Shilluk law "...is a law of tradition based on decisions of Nyikang and of previous kings."(1) He maintains that justice is very arbitrary and depends much on individual interpretation and custom. The settlement chief has a court to which are brought cases which the gol leaders and the hamlet headmen feel unable to settle or which are too serious for them to judge. The accuser and accused appear before the settlement chief and the headmen is often called as witness, while the elders assist. In major disputes, or if the settlement chief's decision is appealed against, the matter is brought before the *reth*. Hofmayr further states that important cases are treated by him and his judgement is final.(2)

In the courts compensation is awarded for homicide and fines in cattle or goats, according to the seriousness of the offence, are imposed for disputing the *reth*'s judgement, refusing to pay royal tribute, wounding a royal prince or princess, for theft, robbery and sexual offences. Apart from minor offences it would appear that offenders were brought to court and tried, not so much for private wrongs as for public delicts or crimes coming under the general category of breaking the *reth*'s peace, disputing the *reth*'s judgement, breaking the *reth*'s and Nyikang's laws.

Information suggests that in practice in the past the *reth*'s judicial authority was by no means undisputed. Hofmayr maintains that an order or judgement of the *reth*'s court was executed by the *reth*'s bodyguard, which consisted of a number of youths who followed the king everywhere. According to the same authority "blood revenge is well known among the Shilluk and feuds do exist between persons, between families and also between villages."(3) The fine for homicide is 10 head of cattle; formerly a girl was taken instead of cattle. According to both Seligman and Hofmayr, the *reth* kept the cattle but might give two or three cows to the family of the deceased as compensation. This practice is comparable to similar legal procedures in communities in which feuds still flourish and the central authority does not exercise very extensive political powers.

Intervention in a serious feud between two districts probably took the form of the *reth* supporting one side against the other, and self-help, sometimes both by the *reth*'s intervention, was possibly the means of obtaining compensation and settling disputes which were not willingly submitted by the two quarrelling parties to arbitration and the judgement of a court. On the other hand, a description of the settlement of a feud by Oyler suggests that the role of the *reth* is essentially that of peacemaker, but that his functions can only be exercised if the disputants are willing to make peace.(4) In this respect it would appear that the role of the *reth* is comparable to that of other ritual and peacemaking functionaries among the Nilotes, such as the leopard-skin chief of the Nuer and the Dinka spear-chiefs.

(1) Hofmayr, Die Schilluk, 1925, p.137.
(2) Ibid.
(3) Ibid., p.38.
(4) Oyler, I.A.I. 1930, Vol.III, No.3, pp.256-99.

5:Lienhardt E-4 (no date) 1954 FJ23 Shilluk FJ23

judge, for, as the source of both good and evil, he can be regarded as indifferent, or friendly, or hostile, according to the judgement of the individual in any particular situation. His existence is taken for granted, and what people know or think of him does not alter nor define nor limit him. It is suggested by Hofmayr that the idea of punishment for wrong done is connected rather with the dissatisfied dead and with the ancestors than with the direct action of God. It is they who bring it about that God punishes the guilty.[1] Such beliefs are accompanied with very little elaboration of ideas about the state of the dead. Stories about the land of the dead, where all is quiet, as it is in the Shilluk capital of Fashoda, seem to represent fancies rather than traditionally formulated beliefs. The dead are in some sense nearer to God than are the living for they exist increasingly in a world of ideas, as the impressions they left upon their descendants become fainter with the passage of time; but, as another Shilluk proverb says, 'man does not think about death'. They pray that they may be helped in this life.

Association of Nyikang with Light and Knowledge

Mention was made earlier of a contest between Dak and Dimo, in which Dak struck his opponents blind, until they accepted his superiority, when he restored their sight. The same story is sometimes told of Nyikang and Duwat.[2] Since Nyikang and Dak represent the way in which the Shilluk know the order of their world, as well as being themselves examples of knowledge and intelligence, it is appropriate that the power to blind people should be attributed to them in myth. Another myth tells how Nyikang, in order to capture some sorcerers for his country, covered the earth with a shadow so that they could not see anything.[3] This association of Nyikang with seeing and light, and thus, I suggest, with knowledge and understanding, occurs again in the belief that Nyikang sometimes shows himself in dreams as a bright light;[4] he appears also, among other forms, as a white bull. Dak and other kings appear also in the form of a white egret. The logic of this symbolism is not specifically examined in the literature, but in Shilluk thought there seems to be some association between light and sight, and Nyikang and the kings. In the installation ceremonies of 1943, we are told that 'all objects of great sanctity were covered in white cloth . . . with all cattle [for sacrifice] it was evident how careful the Shilluk were to see that the animal was blindfold'.[5] At the conclusion of the sacrifices which marked the stages towards the complete installation of the king, then representing Nyikang, these wrappings were torn off. The significance of this may be partly that such objects, which are holy, are also dangerous to ordinary men who must be protected from them. In the installation ceremonies, the Shilluk fled when they supposed that Nyikang had come, and again fled from the effigy of Dak, with 'a mixture of fear and laughter'.[6] One

[1] Ibid., p. 230.
[2] Westermann, 1912, p. 188.
[3] Howell and Thomson, 1946 p. 56.
[4] Oyler, 1928, (i), p. 298.
[5] Seligman, 1932, p. 76.
[6] Ibid., p. 96.

Stowell E-4.5 (1937, 1948) 1963 F323 Shilluk F323

Shilluk were perhaps more prosperous cattle-owners and the rate of bridewealth was higher.

There is in fact no evidence that the number of cattle paid as bridewealth was ever higher than ten, though it may have been so in the era preceding Turkish times. During the *Mahdia*, and for some time after, when the Shilluk had even less cattle than they have now, the transfer of more than two head as bridewealth seems to have been exceptional. But in the more prosperous period which followed, when cattle increased, there was an aftermath of claims dating back to marriages contracted at an earlier date. Some of these claims were upheld in the Courts established by the Government; a procedure which no doubt fostered the belief that the rate of ten head of cattle was unalterable and amounted to the enforcement of obligations which would not otherwise have been honoured. Latterly, the Administration has made attempts to reduce the bridewealth rate. At times in recent years, presumably after epidemics which have sometimes nearly halved the cattle population in the course of twelve months, ten head of cattle as bridewealth has been excessive, with varying results all naturally considered undesirable by the Administration. First, there has been a marked increase in litigation over bridewealth claims. Young men, having started the processes of marriage and made some initial payments of cattle, have then absconded with their brides and refused to honour further obligations. Second, since suitable husbands with sufficient cattle are not to be found, Shilluk girls, unable to marry the men of their choice, in an age when some degree of emancipation has been the result of alien government, tend to drift into the towns as concubines and prostitutes.[1] This process has an equally undesirable corollary. The young men, unable to marry, are more inclined to illicit love affairs, with the result that adultery has increased with a consequent rise in litigation. Finally, the Shilluk have taken to marrying their daughters to Nuer or Dinka who are easily able to find the ten head of cattle required. This process, though not necessarily undesirable in itself, has the effect of aggravating the position, because Shilluk men find it even harder to acquire wives. Without this absorption of Shilluk girls by intermarriage with other tribes or by the process of detribalization, their guardians might be prepared to accept smaller numbers of cattle as they undoubtedly did during the impoverished times of the *Mahdia*.

There have been many discussions, recorded in Government files, of the necessity for reducing the amount of bridewealth and it is clear that Shilluk chiefs and notables have themselves been acutely aware of the need to do so. Yet, despite resolutions made at Shilluk Council meetings, no alteration has in fact occurred.

Divorce and the Dissolution of Marriage

Divorce laws among the Shilluk are, in principle though not in detail, similar to those current among other Nilotic tribes. We must here distinguish between what may be called "active divorce", when both parties are still living, and "dissolution of legal union", which sometimes follows the death of the wife.

[1] Encouraged perhaps by the removal of customary deterrents. The 10th meeting of the Shilluk Council (1927) records: "Chiefs are warned that the following customary "punishments" for a woman are forbidden and will be followed by imprisonment:
(a) Tying her up in a wet and half decomposed hide.
(b) Tying her up outside at night for the mosquitoes to bite her.
(c) Smoking her in a closed up house.
(d) Sticking thorns up her finger nails.
The Government does not object to the lawful guardian of a woman or a girl giving her a moderate correction with the palm of his hand, or a light whip, but beating with a stick is also forbidden.

17: Pumphrey G-5 (1934-1938) 1941
FJ23 Shilluk FJ23

CHAPTER 5.

Customary Law.

PROPERTY.

Since the *Kwar* entire has been split into lineages within the various settlements the ties of clan have become weaker and now operate practically only within the settlement. *Pari passu* with this slackening of the ties of the clan has occurred a change in the ownership of cattle[30]. Possibly the clan used to own cattle in a communal herd from which were disbursed cattle in return for wives from another clan. At present the cattle of each hamlet are kept rigidly apart and not even within the hamlet are they communally owned. The *gol* leader alone owns cattle and he alone, as has already been described, can dispose of them. He alone allots cattle as bride wealth for unmarried male members of his *gol* and receives cattle paid to the *gol*, whether as marriage price or as compensatory payment for a wrong. 422 614 422 592

It is not perhaps too fanciful to compare his position with that of a trustee towards beneficiaries (who are the members of his *gol*). He is the sole legal owner and can, legally, dispose of them as he chooses. He holds them in fact however subject to a trust which equity will enforce. The terms of the trust are that all cattle shall be applied solely towards the marriages of male members of the *gol* in order of their seniority, that no cattle shall be sold except for the purchase of grain in time of famine, and that the *gol* leader shall not himself marry a second time unless there is no unmarried male member of the *gol* of marriageable age. Any compensatory payment becoming due from the *gol* on account of a wrong should take precedence over any other payment. A breach of these "terms of trust" would be universally censured but would probably not be interfered with by the courts, which tend conveniently to hold that a *gol* leader has full and sole right as to disposal. [583] [681] [626]

It is interesting that where a compensatory payment for killing is due the net is cast wider and not only the entire lineage but even members of other lineages of the same clan may be required to contribute. [613] [614] [672]

30. Where "cattle" is used in this chapter it may be taken to extend also to goats.

29:Dempsey M-5 (1940-1954) 1955
FJ23 Shilluk FJ23

565 563 term applies only to the descendants of the original companions of Nyikang, but in practice it embraces the whole of the common people and includes those who were probably in possession of the land before the coming of the Shilluk and who were conquered and absorbed into the tribe, and individuals of other tribes who, whatever their origin, have come into the country and settled there, eventually merging with the people.

565 644 [567] The last class is that of the Bang Reth, the servants of the king. This group is made up of the king's personal attendants, his wives and the wives of former kings, and the descendants of former royal slaves. It includes also those who have taken up special service with the king because of their reverence for his sacred office as Vicar of Nyikang, those who by reason of their utter destitution have been driven to accept the yoke of bondage to the king that they might share the bounty of the royal table, and those who [567 581] have been enslaved on account of a crime committed by some member of their family who himself has escaped the king's justice.

565 582 Marriage is permitted between the Kwareth and members of the other three classes with certain exceptions. Thus, for example, a Kwareth may marry into the Bareth, but he may not wed the former wife of a king, or the widow of a king. The daughters of a king may not marry at all; since in theory all the cattle in the land belong to the king, no one can offer him a dowry, and so his daughters must go unmarried. In 644 565 582 marriage the great rule of exogamy, that is marriage outside the clan, must be observed. Now the Kwareth form only one clan, as also do the Ororo, but the Colo and the Bang Reth are divided into several clans. A member of the Kwareth class may not therefore marry another Kwareth, or a member of the Ororo another of the same class, but members of the Colo and the Bareth may marry into other clans of the Colo and Bareth.

29:Dempsey M-5 (1940-1954) 1955
FJ23 Shilluk FJ23

Chapter VII

JUSTICE

A great part of the work of the king and his chiefs is the administration of justice. This is done under the supervision of the local British officials, and, of course, has been restricted in some ways. The former ruthless butchery and mutilation for petty offences is no longer tolerated, nor is the sentence of death and the execution of such a sentence permitted to them. Apart from this, however, it is the policy of the Sudan Government to encourage the various native peoples of the country to administer their own territory according to their age-long traditions and usages. And indeed, a harassed District or Assistant District Commissioner with only a handful of police to help him in administering an enormous area, being neither argus-eyed nor possessed of the power of being in several places at once, can attend personally only to a fraction of the cases that continually come up for attention. He will deal with the more serious criminal offences, but the majority of disputes and petty crimes among the Shilluk are heard and decided by the king and the district chiefs.

Whether justice as we understand it, the meting out to an individual exactly what is his due, is always done in these cases is another matter. To say, as is often said, that the African has a strong sense of justice and resents being treated unjustly, is not strictly true. He certainly resents being treated unjustly, but often he equally resents being treated justly when the judgment given is detrimental to himself. Hence, in a criminal case in which he is the accused, or in litigation with his neighbour, he will cheerfully swear to tell 'the truth, the whole truth,' meaning all the time 'and nothing like the truth.' Then he spins a most convincing tale which none of the listeners believes but cannot fail to

29:Dempsey M-S (1940-1954) 1955
FJ23 Shilluk FJ23

be telling the truth, and therefore be quite unimpeachable, but he is aware that if the verdict is given in his favour it will be, not so much because of the justice of his claim and his forensic skill in presenting it, but rather because he has promised the judge a bigger 'fee' than his opponent has.

Among the Shilluk the Christian precept of forgiveness of one's enemy does not obtain, but they follow rather the old Jewish principle of retribution for injuries inflicted, and although they will not literally demand 'an eye for an eye and a tooth for a tooth', there is a recognised scale of payment for all such injuries. The penalty for knocking a tooth out is especially severe, the aggressor having to pay the injured party a cow. For an offence against an unmarried girl, her father will claim three cows, and for adultery the fine is four cows. Woe betide the offender who refuses to pay up; he will be wise to keep clear of the district in which the injured party lives, for the relatives of the latter will most surely wreak their vengeance on his person. In the case of homicide, blood payment of ten or more cattle is demanded, quite apart from any penalty that the law may inflict, but sometimes the grief-stricken relatives of the dead person will fulfil quite literally the commandment 'The kinsman of him that was slain shall kill the murderer' (Num. 35: 19), and if perchance he is already in custody and out of their reach will exact vengeance on one of his male relatives. Then the family of the second victim will strive to vindicate their manhood by a raid on the other village and more killings may take place and the feud develop into a minor war, till such time as police can be got to the place and the culprits are arrested.

A grim instance of vendetta occurred in the Lul district a few years ago. A quarrel arose among some youths, tempers rose, a blow was struck and the unlucky recipient died. The aggressor was arrested and sent to Malakal for trial, but a few days later his home was raided and his father murdered as he sat defenceless at his supper. Before police could arrive from Kodok or Malakal, the village of the dead youth was